

DATE FEE PAID 2-26-2013  
RECEIPT # 8641  
AMOUNT \$400.00

APPLICATION # 201302295  
CASE # 11189

COUNTY BOARD OF ADJUSTMENT OF SUSSEX COUNTY  
NOTICE OF APPEAL AND/OR REQUEST FOR:  
VARIANCE  
SPECIAL USE EXCEPTION  
ADMINISTRATIVE VARIANCE

Applicant Brandywine Seaside Pointe LLC Phone 856-813-2000  
Address 525 Fellowship Rd, Suite 360, Mount Laurel, NJ 08054  
Owners Name 36101 Seaside Boulevard LLC Phone 856-813-2000  
Address 525 Fellowship Rd. Suite 360, Mount Laurel, NJ 08054  
Agent/Attorney Tim Willard Phone 856-7777  
Address 26 The Circle, Georgetown, DE 19947

Location: north east of Seaside Blvd. 300 feet  
(N) (S) (E) (W) Road 270A (Munby branch Rd) and being  
400' north east of Route One

District No. 3-34 Map No. 13.00 Parcel No. 325.37  
Subdivision N/A Lot No. C&D Zone GR-RPC  
Hundred LEWES REHOBOTH Frontage N/A Depth N/A Acres 5.5

Request for a special use exception or variance from the provisions of:

Chapter 115 Article VI Subsection 115-40 Item C

Date Property was acquired January 19, 1998

Plot Plan or drawing attached: Yes x NO   

State specifically your request and the reason for this request.

Applicant proposes to expand the existing assisted living facility with a separate two story building with 28 units. The parking lot will be expanded and the existing facility will be modified (approx. 4500 square feet). This Special Use Exception is required in a GR District because it is a convalescent or nursing home.

\* Requesting a Special Use Exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home)

Tim Willard  
Signature of Applicant/Agent/Attorney

Russell Warrington  
Person Accepting Application

FOR BOARD USE ONLY:

Date of Notice 4/15/13 Date of Hearing April 15, 2013

Date of Decision 4/15/13

Decision of the Board Approved w/ stip.

maintain fence / double row planting 6' min Cyprus.

## MINUTES OF APRIL 15, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 15, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Director of Planning & Zoning, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes of March 18, 2013 and the Finding of Facts of March 18, 2013. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### PUBLIC HEARINGS

**Case No. 11189 – Brandywine Seaside Pointe LLC** – northeast of Seaside Boulevard 580 feet east of Road 270A (Munchy Branch Road) and being 400 feet east of Route One (Coastal Highway). (Tax Map I.D. 3-34-13.00-325.37)

An application for a special use exception to expand an existing Assisted Living Facility (Convalescent / Nursing Home).

Mr. Lank presented the case. Mr. Lank advised the Board that the Office of Planning & Zoning received a letter from an owner of a nearby property who expressed concerns about his view if the Applicant expands its facility.

Michael Colvin, Peter Burke, Jr. and Steve Heene were sworn in to testify about the Application. Tim Willard, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review. Mr. Willard stated that the Applicant is requesting a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home); that the use will not substantially affect adversely the uses of neighboring and adjacent properties; that the existing facility was approved in 1996 for a convalescent home; that the existing facility has been in operation for fifteen (15) years; that the Applicant plans to add an additional 28 beds for Alzheimer's and dementia patients; that the proposed addition will be called "Reflections"; that there is an increased need for this type of care in the area; that the Applicant operates a similar facility in Fenwick Island and there is a waiting list for that facility; that the Applicant is a leader in its field; that there will be changes made to the existing entrance of the facility as the entrance will be moved to the center of the

building; that the change in the entrance will result in a loss of six (6) beds in the old portion of the facility but will increase leisure space within the facility; that the available parking spaces will increase from 34 parking spaces to 64 parking spaces; and that there will be an additional six (6) employees hired for the proposed expansion.

Michael Colvin testified that the site will have one (1) parking space for every four (4) beds and that the Applicant is only required to have 55 parking spaces.

Mr. Willard stated that most residents no longer drive; that parking problems typically only exist during holidays such as Christmas and Mother's Day; that the Applicant will landscape the parking lot islands; that the Applicant will install additional lighting in the parking lot; and that the proposed addition will have the same appearance as the existing building.

Mr. Burke testified that he is the Vice President of Brandywine Seaside Pointe, LLC; that the Alzheimer's Disease epidemic is creating problems because those who suffer from the disease are living longer; that 40% of the residents at the Fenwick Island facility suffer from Alzheimer's Disease or related conditions; that the proposed expansion will help the Applicant meet a demand; that the closest facility is 25 miles away; and that only 2 or 3 current residents actually drive.

Mr. Colvin testified that the water runoff from the parking lot will be directed to the existing Storm Water Management Pond; that adequate capacity for the water and sewer is available to accommodate the proposed addition; that Tidewater provides water to the site and Sussex County provides sewer services; and that the proposed lighting is designed so that it does not disturb the neighboring properties.

Mr. Willard stated that the Applicant obtained an appraisal comparing the Beachfield community, which is adjacent to the facility, to other similar communities adjacent to convalescent homes and the appraisal showed that there is no substantial adverse effect to the surrounding neighborhoods; that there are Leland Cypress trees along the property line and the Applicant is willing to increase the buffer, if necessary; that there is intense commercial activity nearby as a pharmacy, a grocery store, and a bank are very close to the Property; that the facility is a transition property separating the residential properties in Beachfield from the nearby commercial properties; and that the facility is very secure.

Mr. Heene testified that the facility is equipped with keypad entry and alarms on all doors; that any outdoor activity for the residents is within a fenced in area; that nursing care is provided 24 hours a day / 7 days a week; that the Applicant operates 25 facilities in five (5) states; that the Applicant is very concerned about keeping the facility secure; that the Applicant will install cameras outside the facility's exit doors; and that the facility practices yearly disaster drills with the local fire department. Mr. Heene, under oath, confirmed the statements made by Mr. Willard.

Mr. Lank read into the record another letter the Office of Planning & Zoning received from a neighbor who was in opposition to the Application.

Sally Cooper was sworn in and testified in opposition to the Application. Ms. Cooper testified that she lives in Beachfield development; that she is concerned about the additional parking lot, lighting and landscaping; that her property abuts the parking lot; that she would like to see a double row of Leland Cypress trees planted along the property line; and that the existing fence is currently not maintained and that she would like the Applicant to maintain the fence.

Gabriel Fisher was sworn in and testified in opposition to the Application. Ms. Fisher testified that she is concerned about increased noise and lighting issues; that there are no trees planted between her property and the Applicant's property; that she would like to see a double row of Leland Cypress trees planted to create a buffer; that she is concerned the lighting for the Property will shine on her property; and that the Applicant should maintain the existing fence.

Bill Gallop was sworn in and testified in opposition to the Application. Mr. Gallop testified that he would like to know the shift schedule and hours of operation; that the Beachfield development never received a copy of the proposed plan from the Applicant; and that the Applicant has been a great neighbor.

In rebuttal, Tim Willard, stated that the Applicant is willing to plant additional Leland Cypress trees, beginning at the end of the existing row of Leland Cypress trees; and that the Applicant will have no objection to maintaining the existing fence.

Mr. Colvin testified that the Applicant could put a double row of Leland Cypress trees near the current trees; that he does not think there is enough space to plant a double row in the new area but there is enough space to plant a single row of the trees beginning at the end of the existing row of Leland Cypress trees; and that the lighting will be taller than eight (8) feet but is designed to minimize the impact to surrounding properties and not radiate outside the parking area.

Mr. Heene testified that the shifts will remain the same, which are 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.

Mr. Willard submitted an exhibit book to the representative from the Beachfield development for their review.

The Board found that no parties appeared in support of the Application.

The Board found that seven (7) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the conclusion of the public hearings, the Chairman referred back to this case. Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11189 for the requested special use exception because the use does not substantially affect adversely the uses of the adjacent and neighboring properties and for the following reasons:

- a. The Applicant proposes to expand an already existing convalescent home. Specially, the new facility would add 28 units. The current facility has 96 units. The proposed addition would be approximately 20,000 square feet. The current facility is approximately 64,000 square feet. This expansion fills a significant demand for healthcare for the elderly and the expanded activity because of economies of scale is marginal and would not substantially affect adversely the neighbors or adjacent properties.
- b. The use would be for a secure facility for patients with Alzheimer's or dementia related diseases and would not generate significant outdoor activity including traffic or noise.
- c. An appraiser's report concluded that the expansion would not adversely affect property values on neighboring residential homes.
- d. The Planning Director reported that the current facility has been in operation for over ten (10) years and has had no violation or known complaints.
- e. The site plan provides for ample parking, appropriate storm water management, and sufficient infrastructure and utilities for the expansion.
- f. The property is located in a GR-RPC which allows for application of a special use exception for convalescent home.
- g. The adjacent property and neighbors include significant commercial activity which would not be adversely affected by this expansion.
- h. The applicant will maintain and / or install sufficient buffers to all residential property and install landscaping and appropriate lighting.

As part of the Motion for approval, Mr. Rickard placed a stipulation that a double row of six (6) foot high Leland Cypress trees be planted by the Applicant along the property line and that the Applicant maintain the fence between the Applicant's property and the Beachfield development.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated and with the stipulation that a double row of**

**6-foot high Leland Cypress trees be planted and that the Applicant maintains the fence.**  
Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

~~Case No. 11190 – Charles Limmer & Betty Limmer – south of Route 54 (Lighthouse Road) west of Tyler Avenue, being Lot 41 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-69.00)~~

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case and stated the Office of Planning & Zoning has not received any letters regarding this Application. Charles Limmer, Sr., was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and stated that the Applicants are requesting a variance of five (5) feet from the 10 feet side yard setback requirement for a proposed attached garage and a variance of five (5) feet from the 20 feet rear yard setback requirement for a proposed porch. Mr. Fuqua submitted exhibits to the Board for review. Mr. Fuqua stated that the Property is located within the Cape Windsor development; that the Applicants applied for variances in November 2012 and the Application was denied; that the Applicants have re-designed the proposed dwelling per the Board's comments; that there is a significant difference in the new site plan submitted with this Application from the site plan offered in the prior application; that the proposed dwelling is more in conformity with other dwellings in Cape Windsor; that Cape Windsor is a dense residential development; that the lot is 50 feet wide; that the existing home had to be removed and replaced; that the building envelope is being moved to the rear of the Property and is not being enlarged; that the rear yard variance will allow room for parking in front of the dwelling and will create a buffer area from the street; that the rear yard is adjacent to the existing lagoon; that the variance requests are consistent with other variances granted in the development; that lots within Cape Windsor are unique because the community was originally developed for manufactured homes; that there have been twenty-two (22) similar variances granted on Tyler Avenue; that the difficulty was not created by the Applicants; that the variances will not alter the character of the neighborhood; that the variances are necessary to enable reasonable use of the Property; that the variances are the minimum variances necessary to afford relief; and that the Applicants have safety concerns about placing their home five (5) feet from the road.

Mr. Limmer, under oath, confirmed the statements made by Mr. Fuqua. Mr. Limmer testified that he has experienced no problems with flooding in the rear of the Property.

The Board found that no parties appeared in support of or in opposition to the Application.

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BRANDYWINE SEASIDE POINTE, LLC

(Case No. 11189)

A hearing was held after due notice on April 15, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).

Findings of Fact

The Board found that the Applicant was seeking a special use exception for promotional activities as accessory uses to a speedway for a period of five (5) years. This application pertains to certain real property located northeast of Seaside Boulevard 580 feet east of Road 270A (Munchy Branch Road) and being 400 feet east of Route One (Coastal Highway); said property being identified as Sussex County Tax Map Parcel Number 3-34-13.00-325.37. After a hearing, the Board made the following findings of fact:

1. Michael Colvin, Peter Burke, Jr. and Steve Heene were sworn in to testify about the Application.
2. Timothy Willard, Esquire, presented the Application on behalf of the Applicant.
3. The Board found that Mr. Willard submitted exhibits for the Board to review.
4. The Board found that Mr. Willard stated that the Applicant is requesting a special use exception to expand an existing Assisted Living Facility (Convalescent/Nursing Home).
5. The Board found that Mr. Willard stated that the use will not substantially affect adversely the uses of neighboring and adjacent properties.
6. The Board found that Mr. Willard stated that the existing facility was approved in 1996 for a convalescent home and that the existing facility has been in operation for fifteen (15) years.
7. The Board found that Mr. Willard stated that the Applicant plans to add an additional 28 beds for Alzheimer's and dementia patients and that the proposed addition will be called "Reflections".
8. The Board found that Mr. Willard stated that there is an increased need for this type of care in the area as the Applicant operates a similar facility in Fenwick Island and there is a waiting list for that facility.
9. The Board found that Mr. Willard stated that the Applicant is a leader in its field.
10. The Board found that Mr. Willard stated that there will be changes made to the existing entrance of the facility as the entrance will be moved to the center of the building.
11. The Board found that Mr. Willard stated that the change in the entrance will result in a loss of six (6) beds in the old portion of the facility but will increase leisure space within the facility.
12. The Board found that Mr. Willard stated that the available parking spaces will increase from 34 parking spaces to 64 parking spaces.
13. The Board found that Mr. Willard stated that there will be an additional six (6) employees hired for the proposed expansion.
14. The Board found that Mr. Colvin testified that the site will have one (1) parking space for every four (4) beds and that the Applicant is only required to have 55 parking spaces.

15. The Board found that Mr. Willard stated that most residents no longer drive and that parking problems typically only exist during holidays such as Christmas and Mother's Day.
16. The Board found that Mr. Willard stated that the Applicant will landscape the parking lot islands and will install additional lighting in the parking lot.
17. The Board found that Mr. Willard stated that the proposed addition will have the same appearance as the existing building.
18. The Board found that Mr. Burke testified that he is the Vice President of Brandywine Seaside Pointe, LLC.
19. The Board found that Mr. Burke testified that the Alzheimer's Disease epidemic is creating problems because those who suffer from the disease are living longer.
20. The Board found that Mr. Burke testified that 40% of the residents at the Fenwick Island facility suffer from Alzheimer's Disease or related conditions.
21. The Board found that Mr. Burke testified that the proposed expansion will help the Applicant meet a demand.
22. The Board found that Mr. Burke testified that the closest facility is 25 miles away.
23. The Board found that Mr. Burke testified that only 2 or 3 current residents actually drive.
24. The Board found that Mr. Colvin testified that the water runoff from the parking lot will be directed to the existing Storm Water Management Pond and that adequate capacity for the water and sewer is available to accommodate the proposed addition.
25. The Board found that Mr. Colvin testified that Tidewater provides water to the site and Sussex County provides sewer services.
26. The Board found that Mr. Colvin testified that the proposed lighting is designed so that it does not disturb the neighboring properties.
27. The Board found that Mr. Willard stated that the Applicant obtained an appraisal comparing the Beachfield community, which is adjacent to the facility, to other similar communities adjacent to convalescent homes and the appraisal showed that there is no substantial adverse effect to the surrounding neighborhoods.
28. The Board found that Mr. Willard stated that there are Leland Cypress trees along the property line and the Applicant is willing to increase the buffer, if necessary.
29. The Board found that Mr. Willard stated that there is intense commercial activity nearby as a pharmacy, a grocery store, and a bank are very close to the Property.
30. The Board found that Mr. Willard stated that the facility is a transition property separating the residential properties in Beachfield from the nearby commercial properties.
31. The Board found that Mr. Willard stated that the facility is very secure.
32. The Board found that Mr. Heene testified that the facility is equipped with keypad entry and alarms on all doors and that any outdoor activity for the residents is within a fenced in area.
33. The Board found that Mr. Heene testified that nursing care is provided 24 hours a day / 7 days a week.
34. The Board found that Mr. Heene testified that the Applicant operates 25 facilities in five (5) states.
35. The Board found that Mr. Heene testified that the Applicant is very concerned about keeping the facility secure and will install cameras outside the facility's exit doors.
36. The Board found that Mr. Heene testified that the facility practices yearly disaster drills with the local fire department.
37. The Board found that Mr. Heene, under oath, confirmed the statements made by Mr. Willard.



38. The Board found that Sally Cooper, Gabriel Fisher, and Bill Gallop were sworn in and testified in opposition to the Application.
39. The Board found that Ms. Cooper testified that she lives in Beachfield development.
40. The Board found that Ms. Cooper testified that she is concerned about the additional parking lot, lighting and landscaping and that her property abuts the parking lot.
41. The Board found that Ms. Cooper testified that she would like to see a double row of Leland Cypress trees planted along the property line.
42. The Board found that Ms. Cooper testified that the existing fence is currently not maintained and that she would like the Applicant to maintain the fence.
43. The Board found that Ms. Fisher testified that she is concerned about increased noise and lighting issues.
44. The Board found that Ms. Fisher testified that there are no trees planted between her property and the Applicant's property and that she would like to see a double row of Leland Cypress trees planted to create a buffer.
45. The Board found that Ms. Fisher testified that she is concerned the lighting for the Property will shine on her property.
46. The Board found that Ms. Fisher testified that the Applicant should maintain the existing fence.
47. The Board found that Mr. Gallop testified that he would like to know the shift schedule and hours of operation, that the Beachfield development never received a copy of the proposed plan from the Applicant, and that the Applicant has been a great neighbor.
48. The Board found that Mr. Colvin testified that the Applicant could put a double row of Leland Cypress trees near the current trees.
49. The Board found that Mr. Colvin testified that he does not think there is enough space to plant a double row in the new area but there is enough space to plant a single row of the trees beginning at the end of the existing row of Leland Cypress trees.
50. The Board found that Mr. Colvin testified that the lighting will be taller than eight (8) feet but is designed to minimize the impact to surrounding properties and not radiate outside the parking area.
51. The Board found that Mr. Heene testified that the shifts will remain the same, which are 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m.
52. The Board found that no parties appeared in support of the Application.
53. The Board found that seven (7) parties appeared in opposition to the Application.
54. The Board found that the Office of Planning & Zoning received two (2) letters in opposition to the Application.
55. Based on the findings above and the testimony presented at the public hearing, the Board determined that the application met the standards for granting a special use exception because the use does not substantially affect adversely the uses of adjacent or neighboring properties and for the following reasons:
  - a. The Applicant proposes to expand an already existing convalescent home. Specially, the new facility would add 28 units. The current facility has 96 units. The proposed addition would be approximately 20,000 square feet. The current facility is approximately 64,000 square feet. This expansion fills a significant demand for healthcare for the elderly and the expanded activity because of economies of scale is marginal and would not substantially affect adversely the neighbors or adjacent properties.
  - b. The use would be for a secure facility for patients with Alzheimer's or dementia related diseases and would not generate significant outdoor activity including traffic or noise.
  - c. An appraiser's report concluded that the expansion would not adversely affect property values on neighboring residential homes.

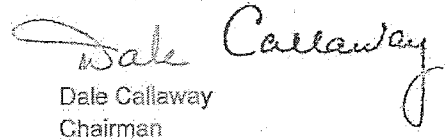
- d. The Planning Director reported that the current facility has been in operation for over ten (10) years and has had no violation or known complaints.
  - e. The site plan provides for ample parking, appropriate storm water management, and sufficient infrastructure and utilities for the expansion.
  - f. The property is located in a GR-RPC which allows for application of a special use exception for convalescent home.
  - g. The adjacent property and neighbors include significant commercial activity which would not be adversely affected by this expansion.
  - h. The applicant will maintain and / or install sufficient buffers to all residential property and install landscaping and appropriate lighting.
56. As part of its approval, the Board placed the following conditions on the special use exception:
- a. The Applicant plant a double row of six (6) foot high Leland Cypress trees along the property line; and
  - b. The Applicant maintain the fence between the Applicant's property and the Beachfield development.

The Board granted the special use exception application with the conditions stated herein finding that it met the standards for granting a special use exception.

#### Decision of the Board

Upon motion duly made and seconded, the special use exception application with the conditions stated herein was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the special use exception application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY

  
Dale Callaway  
Chairman

If the use is not established within one (1)  
year from the date below the application  
becomes void.

Date May 21, 2013